

Before the
Administrative Hearing Commission
State of Missouri



JERRY AND SHARON FRANKLIN,

Petitioners,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 15-0267 RI

DECISION

We dismiss the complaint filed by Jerry and Sharon Franklin (“the Franklins”) because we lack the jurisdiction to hear it at this time.

Procedure

On February 20, 2015, the Franklins filed a complaint appealing the 2011 notice of adjustment issued to them by the Director of Revenue (“the Director”). On March 6, 2015, the Director filed a motion to dismiss the complaint. We gave the Franklins until March 24, 2015 to file a response to the Director’s motion, but they did not file one.

We treat the Director’s motion to dismiss as a motion for summary decision because it relies on matters other than the allegations in the complaint. 1 CSR 15-3.436(4) and 1 CSR 15-

3.446(6)(A).¹ We may grant a motion for summary decision if a party establishes facts that entitle it to a favorable decision and no party genuinely disputes such facts. 1 CSR 15-3.446(6)(A)

Findings of Fact

1. On December 10, 2014, the Director mailed to the Franklins a notice of adjustment regarding their 2011 Missouri individual income taxes.

2. In response to an inquiry from the Franklins, the Taxation Division sent the Franklins a letter on January 21, 2015 indicating that the notice of adjustment would stand.

3. On February 20, 2015, the Franklins filed their complaint with this Commission and also filed a protest of the 2011 notice of adjustment to the Director.

4. The notice of adjustment does not contain language concerning a right to appeal such notices to this Commission.

5. The Franklins' letter of complaint requests a review of the decision on the notice of adjustment, and "[i]f appropriate, the taxpayer request a hearing in front of the Administrative Hearing Commission..."

6. The Director has not issued a final decision of the protest.

Conclusions of Law

Section 621.050.1² gives us jurisdiction over an appeal of "any finding, order, decision, assessment or additional assessment made by the director of revenue." However, two Missouri cases appear to make the filing of a protest with the Director a necessary step before an appeal can be filed with this Commission. The Supreme Court referred to filing a protest as the

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

²Statutory references, unless otherwise noted, are to RSMo 2000.

“exclusive remedy for challenging the assessment.” *State ex. rel. Fischer v. Brooks*, 150 S.W.3d 284, 284 (Mo. banc 2004). *State ex rel. Fischer v. Sanders*, 80 S.W.3d 1, 5 (Mo. App. W.D. 2002), sets forth the protest as a necessary step in appealing a case to this Commission and then to a court.

The Director provided uncontested evidence establishing that she has not issued a final decision concerning the Franklins’ notice of deficiency; therefore, we are without jurisdiction to hear their appeal because our jurisdiction only arises upon the issuance of a final decision by the Director. If we have no jurisdiction, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).

Summary

We grant the Director’s motion and dismiss the Franklins’ complaint.

SO ORDERED on April 1, 2015.

/s/ Audrey Hanson McIntosh
AUDREY HANSON MCINTOSH
Commissioner